

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
The Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

Rulemaking for purposes of revising General Order
96-A regarding informal filings at the Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**VERIZON'S OPENING COMMENTS ON THE OPINION
ADOPTING TELECOMMUNICATIONS INDUSTRY RULES**

ELAINE M. DUNCAN
JESÚS G. ROMÁN
112 Lakeview Canyon Road,
CA501LB
Thousand Oaks, CA 91362
Tel: (805) 372-6233
Fax: (805) 373-7515
jesus.g.roman@verizon.com

Attorneys for Verizon

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Pursuant to Article 14 of the Commission's Rules of Practice and Procedure, Verizon California Inc. (U 1002 C), on behalf of itself and its certificated California wireline affiliates (collectively "Verizon"),¹ submits these Opening Comments on the Opinion Adopting Telecommunications Industry Rules (the "Rules PD").

INTRODUCTION

By and large, the Rules PD properly implements the goals related to Advice Letter filings prompted by URF and the Commission's companion proposed decision allowing detariffing of retail services and allowing new services to be offered on a detariffed basis.² As Verizon recommends in its Opening Comments on the Policy PD, there are several changes to the Policy PD that would require changes to the Industry Rules. And there are other changes that the Commission should make to ensure consistency with URF and the Policy PD and to avoid unintended consequences. Verizon proposes these changes below.

¹ These affiliates include Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance (U-5732-C), NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (U-5658-C), MCI Communications Services, Inc., d/b/a Verizon Business Services (U-5378-C), MCI Metro Access Transmission Services, d/b/a Verizon Access Transmission Services (U-5253-C), TTI National, Inc., d/b/a Verizon Business Services (U-5403-C), Teleconnect Long Distance Services & Systems Company, d/b/a Telecom*USA (U-5152-C), Verizon California Inc. (U-1002-C), and Verizon Select Services Inc. (U-5494-C).

² Opinion Consolidating Proceedings, Clarifying Rules for Advice Letters under the Uniform Regulatory Framework, and Adopting Procedures for Detariffing (the "Policy PD").

DISCUSSION

I. THE TRANSLATION INTO INDUSTRY RULES OF THE POLICY PD'S OBLIGATION TO MAINTAIN A SEPARATE RESALE TARIFF FOR DETARIFFED SERVICES CREATES A NUMBER OF UNINTENDED PROBLEMS THAT SHOULD BE CORRECTED.

The Rules PD and the Industry Rules purport to prohibit detariffing of Resale Tariffs, consistent with Conclusion of Law 22 in the Policy PD.³ But this result creates a number of technical errors and contradictions that must be corrected to ensure that the detariffing goals of the Policy PD are not unintentionally reversed.

First, Industry Rule 5 should be modified because the reference to Resale Service has the effect of negating the purpose of the rule to allow detariffing of retail services. The rule states: “An URF Carrier may cancel by advice letter any **retail** tariff currently in effect except . . . a service (such as **Resale Service**) not within the scope of services for which the Commission granted full pricing flexibility in Decision 06-08-030” (emphasis added). This resale detariffing prohibition could be interpreted to mean that an URF Carrier must *either* maintain its existing **retail** tariffs for reference in resale tariffs or maintain in its resale tariffs a full set of rates, terms and conditions for all retail services offered for resale (in effect a complete restatement of its existing retail tariffs).

The obligation to maintain a resale tariff for detariffed services imposes an implementational burden that provides no benefits to resale customers but risks undermining many of the benefits detariffing is intended to provide. On the one hand, the Policy PD would eliminate filing requirements for detariffed retail

³ Policy PD at 71.

services: “Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, including advice letters or contracts.”⁴ On the other hand, every term, condition, or pricing change to any detariffed retail service would require corresponding updates to the resale tariff by advice letter. The information in this filing would merely duplicate the information regarding retail rates, terms and conditions that the Policy PD already requires carriers to post on their Web sites.⁵ Any benefits provided by detariffing in terms of reduced filing obligations for retail services, therefore, would be offset by duplicative filing obligations for resale services.

This result is inapposite to the detariffing goals of the Policy PD. Although Verizon agrees that the URF decision had no effect on wholesale (including resale) prices, as a legal and technical matter, there is no substantive difference between a retail service and its resale counterpart, but for the 12% or 17% discount that resellers are afforded under applicable state and federal law.⁶ The Commission should eliminate the reference to Resale Service in Rule 5, as there would be no prejudice to resellers: ILECs would still be required to provide the 17% or 12% discount. If the Commission deletes the requirement in Rule 5 for tariffing of Resale Service, the Commission should also delete the other references in the Rules to Resale Service (see, e.g., Rules 1.10, 5, 7.1(5), 7.1(6) and 7.4).

⁴ Policy PD at 53.

⁵ See Policy PD at Findings of Fact 20 and 22, Conclusions of Law 11 and 23.

⁶ See Ordering Paragraph 2 of D.96-12-076, *mimeo* at 12 (“When new retail services are introduced, Pacific and GTEC shall make available a wholesale version of the service for resale . . . subject to a discount off the retail rate of 17% for Pacific and 12% for GTEC . . .”).

Second, the reference to separate notice requirements for changes to "Resale Service" in Rule 7.1(6) is also problematic. There is no applicable state or federal requirement that resellers receive any separate notice of changes to the prices, terms, or conditions of the underlying retail service that is subject to resale. As written, however, Rule 7.1(6) can be interpreted to impose a separate notice requirement for resellers. Verizon is unclear whether the Commission actually intended to impose such a new requirement, particularly because the issue of separate notice for resellers was not addressed in the record. Nor would such notice be necessary or useful since resellers receive constructive notice of resale price changes via the retail notice provisions set forth in Industry Rules 3 and 3.3 and/or by requesting as a matter of standard practice to be copied on any advice letter filings implicating retail price changes.

The reference to Rules 3 and 3.3 in Rule 7.1(6) further confuses whether the Commission actually intended to establish a separate notice requirement for resellers. To avoid this problem, the Commission should delete the notice provision in Rule 7.1(6) or, alternatively, clarify that it is intended to apply only to changes to the prices, terms, or conditions of the underlying retail service.

Third, the reference to Resale Service in Rule 7.4 also creates confusion. The Rules PD notes that Rule 7.4 is meant to address only the withdrawal of Basic Service consistent with the Mass Migration Guidelines adopted in D.06-10-021.⁷ The purpose of Rule 7.4 has nothing to do with the withdrawal or freezing of Resale Services and the reference to "Resale Service" should therefore be

⁷ Rules PD at 31.

deleted. Nor does the rule make sense in relation to Resale Service, since it requires meeting all the applicable requirements of Rule 8.5, which only addresses the withdrawal of Basic Service.

In any event, should the Commission adopt Verizon's recommendation to allow detariffing of resale services where the underlying retail service has been detariffed,⁸ then the Commission should delete all references to "Resale Services" in the Industry Rules, including the definition of Resale Services. All of Verizon's concerns can be addressed by this simple fix.

II. THE COMMISSION SHOULD PROVIDE FOR HOW URF CARRIERS WILL BE ABLE TO IMPLEMENT BASIC SERVICE RATE CHANGES UPON THE EXPIRATION OF THE PRICE CAP IN 2009.

Rule 7.1 sets forth the matters that may be filed under the Tier 1 Advice Letter process. The last phrase of Rule 7.1(5) purports to broadly exclude changes to rates, terms, and conditions for "Basic Service" from the Tier 1 process on the grounds that such services are not subject to pricing flexibility under URF. This broad exclusion, however, is inconsistent with URF and should be modified to avoid unintended technical error.

Specifically, the broad exclusion of "Basic Service" under Rule 7.1(5) does not properly consider that under URF, price caps on Basic Service in areas not subsidized by the California High Cost Fund B (CHCF-B) "shall be automatically lifted on January 1, 2009."⁹ As written, no provision appears for how the URF companies will be able to implement Basic Service rate changes upon the expiration of the price cap. In the absence of such a provision, Rule 7.3(1)

⁸ See Verizon's Opening Comments on the Detariffing Policy PD at 1-3.

⁹ See D.06-08030, OP 3.

appears to require Tier 3 treatment of all future Basic Rate changes, triggering the requirement under Rule 8.4 that the carrier demonstrate that the rate change, as proposed, "would be just and reasonable." As the detariffing Policy PD correctly indicates, such a result would be inconsistent with the pricing flexibility granted under URF:

Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.¹⁰

Thus, the Commission should delete the phrase "other than Basic Service" from 7.1(5), or alternatively, clarify that the reference to "Basic Service" in Rule 7.1(5) will expire consistent with the explicit language of the URF decision.

III. THE COMMISSION SHOULD ALLOW CARRIERS TO FILE NEGOTIATED INTERCONNECTION AGREEMENTS UNDER TIER 2 AND INTERCONNECTION AGREEMENT AMENDMENTS UNDER TIER 1.

The Rules PD posits that Negotiated Interconnection Agreements should fall under Tier 3 filings for two reasons. First, the Rules PD finds that ALJ Resolution 181 expressly sets forth a 90-day process for Commission approval or disapproval of such an agreement. Second, the Rules PD notes that, in any event, the Telecommunications Act of 1996 will deem the agreement approved in 90 days if the Commission does not act earlier to approve or disapprove.¹¹ The Commission should move Negotiated Interconnection Agreements to Tier 2 treatment. These agreements, like other contracts, are the product of a meeting of the minds and the Commission has rarely rejected the current generation of

¹⁰ Policy PD at 28 (quoting GO 96-B, General Rule 7.4.2, Example 2).

¹¹ Rules PD at 31.

negotiated agreements. And allowing Tier 2 filing prejudices no one. Under Tier 2, members of the public still have the ability to file a protest, as contemplated in ALJ Resolution 181 Rule 4.3.2, which addresses public comments. And the Commission can suspend the Advice Letter if it anticipates that it would reject a Negotiated Interconnection Agreement. Given all these procedural safeguards, there is no need to require a Tier 3 Commission resolution.

On a related issue, the Industry Rules do not address Interconnection Agreement Amendments. ALJ Resolution 181 Rule 6 provides that Amendments “shall be submitted . . . by Advice Letter” and these will be “deemed approved without a Commission Resolution 30 days from the date the Advice Letter is filed, unless the Commission takes formal action to reject” the Advice Letter. Because Tier 1 filings have a 30-day initial review period under General Rule 7.5.2,¹² the Commission should add Interconnection Agreement Amendments to matters that may be filed under Tier 1 pursuant to Industry Rule 7.1.

IV. THE COMMISSION SHOULD MAKE OTHER CLARIFICATIONS AND EDITS TO AVOID ERROR OR UNINTENDED CONSEQUENCES.

A. Rule Related to New Services

The second paragraph of Rule 5.1 should be edited to delete the first phrase of the second paragraph. The phrase “After the Commission has authorized an URF Carrier to detariff in whole or in part,” is unnecessary and might be interpreted to mean that an URF Carrier cannot make New Service offerings available on a detariffed basis unless it earlier took action to detariff at

¹² See GO 96 B General Rule 7.5.2 (the “initial review period for an advice letter is the 30 days immediately following the date of filing” and this initial review period “also appl[ies] to advice letters effective pending disposition.”).

least part of its tariff. The Commission clearly did not intend such a result. The Policy PD provides that:

It is consistent with our detariffing policy and our findings in Phase I of the URF proceeding to allow carriers to file “new services” as detariffed on an informal, informational basis pursuant to General Rule 6.1 of GO 96-B.¹³

Moreover, the Commission’s very act of adopting the Policy PD constitutes “authorization” for an URF Carrier to detariff, so there is no point to the phrase at issue.

B. Clarification of Industry Rule 5

Industry Rule 5 provides that “An URF Carrier may cancel by advice letter any retail tariff currently in effect except for . . . a provision pertaining to a Utility’s obligations under state or federal law” The term “pertaining to” can be interpreted broadly to include nearly all retail tariffs. Thus, the exception could swallow the rule. The Rule should be reworded as follows:

An URF Carrier may cancel by advice letter any retail tariff currently in effect except for . . . a provision mandated by state or federal law

C. Industry Rule 5.2 Publishing Requirements Are Unnecessary

Consistent with the reasons stated in Verizon Comments on the Policy PD on the issue of publishing tariffs, the Commission should rewrite Rule 5.2¹⁴ either deleting the last sentence or clarifying what it means by it. The reference to “at or after certification” is simply confusing, and the Rules PD does not explain Rule 5.2.

¹³ Policy PD at 7.

¹⁴ See Verizon’s Opening Comments on Detariffing Policy PD at 3 (noting that the Rule would create unnecessary implementational burdens that the Policy PD does not address).

D. Industry Rule 7.1(10) Must be Edited

Industry Rule 7.1(10) states that all promotional offerings must be filed by Advice Letter under Tier 1. But this is inconsistent with both URF and the detariffing rule: the first specifically deregulated promotional offerings and the second specifically allows retail services to be detariffed.¹⁵ In an environment where retail services are detariffed, it makes no sense to require tariffing of promotional offers. The Rule makes sense only for promotional offerings of retail services that remain tariffed or where an URF Carrier chooses to tariff a promotional offering, which the Policy PD allows.¹⁶ Therefore, item 10 of Rule 7.1 should be reworded to add the language below in bold italics:

- (10) A new Promotional Offering ***for a tariffed service***, or continuation of a ***tariffed*** Promotional Offering, by an URF Carrier.

¹⁵ See D.06-08-030 at 190 (explaining that the parties had “demonstrated that increasing the pricing flexibility for promotions complies with, and supports, California’s telecommunications policies. . . . Since we can rely on the voice communications market generally to assure the reasonable pricing of individual services, we accordingly can rely generally on the market to assure the reasonable pricing of promotions”); Policy PD at OP 3 (“a carrier may detariff existing retail services”) and OP 4 (“An URF Carrier may offer new services as detariffed”).

¹⁶ See, e.g., Policy PD at OP 4 (“A carrier may also offer new services as tariffed if it wishes”).

CONCLUSION

For the foregoing reasons, the Commission should adopt Verizon's recommended changes to the Industry Rules.

Dated: August 13, 2007

Respectfully submitted,

/s/ Jesus G. Roman

Jesús G. Román
112 Lakeview Canyon Road
Thousand Oaks, CA 91362
Telephone: (805) 372-6233
Facsimile: (805) 373-7515
Email: jesus.g.roman@verizon.com

CERTIFICATE OF SERVICE

I hereby certify that: I am over the age of eighteen years and not a party to the within entitled action; my business address is 112 Lakeview Canyon Road, CA501LB, Thousand Oaks, California 91362; I have this day served a copy of the foregoing, **VERIZON'S OPENING COMMENTS ON THE OPINION ADOPTING TELECOMMUNICATIONS INDUSTRY RULES** by electronic mail to those who have provided an e-mail address and by U.S. Mail to those who have not, on the service list.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 13TH day of August , 2007 at Thousand Oaks, California.

/s/ *Jacque Lopez*

Jacque Lopez

CALIFORNIA PUBLIC UTILITIES COMMISSION

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Appearance

HARRY GILDEA
SNAVELY KING MAJOROS O'CONNOR & LEE INC.
1111 14TH STREET NW
WASHINGTON, DC 20005

RICHARD B. LEE
SNAVELY KING & MAJOROS O'CONNOR & LEE INC
1111 14TH STREET NW
WASHINGTON, DC 20005

MICHELE F. JOY
GENERAL COUNSEL
ASSOCIATION OF OIL PIPE LINES
1101 VERMONT AVENUE N.W. STE 604
WASHINGTON, DC 20005-3521

KIM LOGUE
REGULATORY ANALYST
LCI INTERNATIONAL TELECOM CORP.
4250 N. FAIRFAX DRIVE, 12W002
ARLINGTON, VA 22203

TERRANCE A. SPANN
U. S. ARMY LEGAL SERVICES AGENCY
REGULATORY LAW OFFICE JALS-RL
901 N. STUART STREET, SUITE 700
ARLINGTON, VA 22203

CECIL O. SIMPSON, JR.
US ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET, SUITE 713
ARLINGTON, VA 22203-1837

ROBERT A. SMITHMIDFORD
VICE PRESIDENT
BANK OF AMERICA
8011 VILLA PARK DRIVE
RICHMOND, VA 23228-2332

HUGH COWART
BANK OF AMERICA TECHNOLOGY & OPERATIONS
FL9-400-01-10
9000 SOUTHSIDE BLVD, BUILDING 400 1ST FL
JACKSONVILLE, FL 32256

KEVIN SAVILLE
ASSOCIATE GENERAL COUNSEL
FRONTIER COMMUNICATIONS

KEVIN SAVILLE
ASSOCIATE GENERAL COUNSEL
CITIZENS/FRONTIER COMMUNICATIONS

2378 WILSHIRE BLVD.
MOUND, MN 55364

2378 WILSHIRE BLVD.
MOUND, MN 55364

MICHAEL BROSCHE
UTILITECH INC.
740 NORTH BLUE PARKWAY, STE. 204
LEE'S SUMMIT, MO 64086

ANN JOHNSON
VERIZON
HQE02F61
600 HIDDEN RIDGE
IRVING, TX 75038

ROBIN BLACKWOOD
ATTORNEY AT LAW
VERIZON
600 HIDDEN RIDGE, HQE 03H29
IRVING, TX 75038

ROBBIE RALPH
DIRECTOR, ECONOMIC REGULATION & TARIFF
SHELL CALIFORNIA PIPELINE COMPANY LLC
PO BOX 2648
HOUSTON, TX 77252-2648

ANNA M. SANCHOU
GENERAL MANAGER - NETWORK REGULATORY
SOUTHWESTERN BELL MESSAGING SERVICES INC
5800 NW PARKWAY, STE. 125
SAN ANTONIO, TX 78249

REX KNOWLES
REGIONAL VICE PRESIDENT
XO COMMUNICATIONS SERVICES, INC.
111 EAST BROADWAY, SUITE 1000
SALT LAKE CITY, UT 84111

EDWARD B. GIESEKING
DIRECTOR/PRICING AND TARIFFS
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89150

VALERIE J. ONTIVEROZ
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

NIKAYLA K. NAIL THOMAS
EXECUTIVE DIRECTOR
CALTEL
515 S. FLOWER STREET, 47/F
LOS ANGELES, CA 90071

JERRY R. BLOOM
ATTORNEY AT LAW
WINSTON & STRAWN LLP
333 SOUTH GRAND AVENUE, 38TH FLOOR
LOS ANGELES, CA 90071-1543

ROBERT J. DIPRIMIO
VALENCIA WATER COMPANY
24631 AVENUE ROCKEFELLER
VALENCIA, CA 91355

DON EACHUS
VERIZON CALIFORNIA, INC.
CA501LB
112 S. LAKE LINDERO CANYON ROAD
THOUSAND OAKS, CA 91362

JESUS G. ROMAN
ATTORNEY AT LAW
VERIZON ACCESS TRANSMISSION SERVICES
112 S. LAKEVIEW CANYON ROAD, CA501LB
THOUSAND OAKS, CA 91362

MICHAEL A. BACKSTROM
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

ROLAND S. TANNER
SOUTHERN CALIFORNIA WATER COMPANY
PO BOX 9016
SAN DIMAS, CA 91773

PAUL A. SZYMANSKI
ATTORNEY AT LAW
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET
SAN DIEGO, CA 92101

ESTHER NORTHRUP
COX CALIFORNIA TELCOM
5159 FEDERAL BLVD.
SAN DIEGO, CA 92105

PETER M. DITO
KINDER MORGAN ENERGY PARTNERS
1100 TOWN AND COUNTRY ROAD
ORANGE, CA 92868

MIKE MULKEY
ARRIVAL COMMUNICATIONS
1807 19TH STREET
BAKERSFIELD, CA 93301

CHRISTINE MAILLOUX
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

DIANE I. FELLMAN
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ELAINE M. DUNCAN
ATTORNEY AT LAW
VERIZON
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102

KRISTIN L. JACOBSON
SPRINT NEXTEL
201 MISSION STREET, SUITE 1400
SAN FRANCISCO, CA 94102

MICHEL PETER FLORIO
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

REGINA COSTA
RESEARCH DIRECTOR
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

RUDOLPH M. REYES
ATTORNEY AT LAW
VERIZON
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102

THOMAS J. LONG
ATTORNEY AT LAW
OFFICE OF THE CITY ATTORNEY
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102

WILLIAM NUSBAUM
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

LAURA E. GASSER
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

MONICA L. MCCRARY
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION

ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROOM 5134
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NATALIE WALES
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SINDY J. YUN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

THOMAS A. DOUB
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HEIDI SIECK WILLIAMSON
DEPT OF TELECOMMUNICATIONS & INFORMATION
CITY & COUNTY OF SAN FRANCISCO
875 STEVENSON STREET, 5TH FLOOR
SAN FRANCISCO, CA 94103

STEPHEN B. BOWEN
ATTORNEY AT LAW
BOWEN LAW GROUP
235 MONTGOMERY STREET, SUITE 920
SAN FRANCISCO, CA 94104

ANN KIM
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

DAVID DISCHER
ATTORNEY AT LAW
PACIFIC BELL TELEPHONE COMPANY
525 MARKET STREET, RM. 2027
SAN FRANCISCO, CA 94105

EMERY G. BORSODI
DIRECTOR RATES & REG. RELATIONS
AT&T CALIFORNIA
525 MARKET ST., RM. 1921
SAN FRANCISCO, CA 94105

ERINN R.W. PUTZI
THE STRANGE LAW FIRM, PC
282 SECOND STREET, SUITE 201
SAN FRANCISCO, CA 94105

FASSIL T. FENIKILE
AT&T CALIFORNIA
525 MARKET STREET, ROOM 1925
SAN FRANCISCO, CA 94105

GREGORY L. CASTLE
SENIOR ATTORNEY
AT&T CALIFORNIA
525 MARKET STREET, SUITE 2022
SAN FRANCISCO, CA 94105

GWEN JOHNSON
C/O AT&T CALIFORNIA
525 MARKET STREET, 18TH FLOOR, 6
SAN FRANCISCO, CA 94105

JADINE LOUIE
REGULATORY SERVICES
SBC CALIFORNIA
ASSOCIATE DIRECTOR
525 MARKET ST., 19FL, 7
SAN FRANCISCO, CA 94105

JAMES YOUNG
GENERAL ATTORNEY & ASSIST. GENERAL COUN
AT&T CALIFORNIA
525 MARKET STREET, SUITE 1904
SAN FRANCISCO, CA 94105

JOHN P. CLARKE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MCB10C
SAN FRANCISCO, CA 94105

MARY E. WAND
ATTORNEY AT LAW
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105

MICHAEL D. SASSER
GENERAL ATTORNEY
PACIFIC BELL (AT&T CALIFORNIA)
525 MARKET ST., RM. 2021
SAN FRANCISCO, CA 94105

NEDYA CAMPBELL
AT&T CALIFORNIA
525 MARKET STREET, 19TH FLOOR
SAN FRANCISCO, CA 94105

NELSONYA CAUSBY
ATTORNEY AT LAW
AT&T CALIFORNIA
525 MARKET ST., STE 2025
SAN FRANCISCO, CA 94105

PAUL P. STRANGE
ATTORNEY AT LAW
THE STRANGE LAW FIRM
282 SECOND STREET, SUITE 201
SAN FRANCISCO, CA 94105

PHUONG N. PHAM
MORRISON & FOERSTER
425 MARKET STREET
SAN FRANCISCO, CA 94105

STEPHEN H. KUKTA
COUNSEL
SPRINT NEXTEL
201 MISSION STREET, STE. 1400
SAN FRANCISCO, CA 94105

THOMAS SELHORST
AT&T CALIFORNIA
525 MARKET STREET, RM. 2023
SAN FRANCISCO, CA 94105

MARILYN H. ASH
U.S. TELEPACIFIC CORP.
620/630 3RD ST.
SAN FRANCISCO, CA 94107

PETER A. CASCIATO
ATTORNEY AT LAW
PETER A. CASCIATO P.C.
355 BRYANT STREET, SUITE 410
SAN FRANCISCO, CA 94107

CHERYL HILLS
ICG COMMUNICATIONS, INC.
620 3RD ST
SAN FRANCISCO, CA 94107-1902

ARTHUR D. LEVY
639 FRONT STREET, 4TH FLOOR
SAN FRANCISCO, CA 94111

CARL K. OSHIRO
ATTORNEY AT LAW
CSBRT/CSBA
100 PINE STREET, SUITE 3110
SAN FRANCISCO, CA 94111

DAVID A. SIMPSON
SIMPSON PARTNERS
900 FRONT STREET

E. GARTH BLACK
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP

SAN FRANCISCO, CA 94111

201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

ENRIQUE GALLARDO
LATINO ISSUES FORUM
160 PINE STREET, SUITE 700
SAN FRANCISCO, CA 94111

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JAMES M. TOBIN
ESQUIRE
TWO EMBARCADERO CENTER, SUITE 1800
SAN FRANCISCO, CA 94111

JEANNE B. ARMSTRONG
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JEFFREY F. BECK
ATTORNEY AT LAW
COOPER, WHITE & COOPER, L.L.P.
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO, CA 94111

JOSEPH F. WIEDMAN
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

MARGARET L. TOBIAS
MANDELL LAW GROUP, PC
THREE EMBARCADERO CENTER, SIXTH FL.
SAN FRANCISCO, CA 94111

MARK P. SCHREIBER
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

MICHAEL B. DAY
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

PATRICK M. ROSVALL
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

PATRICK M. ROSVALL
COOPER WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

SARAH DEYOUNG
EXECUTIVE DIRECTOR
CALTEL
50 CALIFORNIA STREET, SUITE 1500
SAN FRANCISCO, CA 94111

SARAH E. LEEPER
STEEFEL LEVITT & WEISS PC
1 EMBARCADERO CENTER 29TH FLOOR
SAN FRANCISCO, CA 94111

THOMAS J. MACBRIDE, JR.
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

MARTIN A. MATTES
ATTORNEY AT LAW
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA 94111-4799

EDWARD W. O'NEILL
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

SUZANNE TOLLER
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

THOMAS HAMMOND
REAL TELEPHONE COMPANY
PO BOX 640410
SAN FRANCISCO, CA 94164-0410

EARL NICHOLAS SELBY
ATTORNEY AT LAW
LAW OFFICES OF EARL NICHOLAS SELBY
418 FLORENCE STREET
PALO ALTO, CA 94301

TERRY L. MURRAY
MURRAY & CRATTY
8627 THORS BAY ROAD
EL CERRITO, CA 94530

RICHARD M. HAIRSTON
R.M. HAIRSTON COMPANY
1112 LA GRANDE AVENUE
NAPA, CA 94558-2168

BETSY STOVER GRANGER
PACIFIC BELL WIRELESS
4420 ROSEWOOD DRIVE, 4TH FLOOR
PLEASANTON, CA 94588

DOROTHY CONNELLY
DIRECTOR, GOVERNMENT RELATIONS
AIRTOUCH COMMUNICATIONS, INC.
2999 OAK RD 5
WALNUT CREEK, CA 94597-2066

MARCO GOMEZ
ATTORNEY AT LAW
S.F. BAY AREA RAPID TRANSIT
PO BOX 12688
OAKLAND, CA 94604-2688

DOUGLAS GARRETT
COX COMMUNICATIONS
2200 POWELL STREET, STE. 1035
EMERYVILLE, CA 94608

DOUG GARRETT
SENIOR DIRECTOR, GOVERNMENT AFFAIRS
ICG COMMUNICATIONS, INC.
180 GRAND AVENUE, STE 800
OAKLAND, CA 94612

GLENN SEMOW
CALIFORNIA CABLE & TELECOMM. ASSOC.
360 22ND STREET, STE. 750
OAKLAND, CA 94612

LESLA LEHTONEN
VP LEGAL AND REGULATORY AFFAIRS
CALIFORNIA CABLE & TELECOM ASSOCIATION
360 22ND STREET, SUITE 750
OAKLAND, CA 94612

MARIA POLITZER
CALIFORNIA CABLE & TELECOM ASSOCIATION
360 22ND STREET, NO. 750

REED V. SCHMIDT
VICE PRESIDENT
BARTLE WELLS ASSOCIATES

OAKLAND, CA 94612

1889 ALCATRAZ AVENUE
BERKELEY, CA 94703

ROBERT GNAIZDA
POLICY DIRECTOR/GENERAL COUNSEL
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, SECOND FLOOR
BERKELEY, CA 94704

THALIA N.C. GONZALEZ
LEGAL COUNSEL
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
BERKELEY, CA 94704

MELISSA W. KASNITZ
ATTORNEY AT LAW
DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD FLOOR
BERKELEY, CA 94704-1204

ROGER HELLER
ATTORNEY AT LAW
DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD FLOOR
BERKELEY, CA 94704-1204

PALLE JENSEN
DIRECTOR OF REGULATORY AFFAIRS
SAN JOSE WATER COMPANY
374 WEST SANTA CLARA STREET
SAN JOSE, CA 95196

RICHARD J. BALOCCO
PRESIDENT
CALIFORNIA WATER ASSOCIATION
374 W. SANTA CLARA STREET
SAN JOSE, CA 95196

SCOTT CRATTY
MURRAY & CRATTY, LLC
725 VICHY HILLS DRIVE
UKIAH, CA 95482

CHARLES BORN
MANAGER, GOVERNMENT & EXTERNAL AFFAIRS
FRONTIER COMMUNICATIONS OF CALIFORNIA
9260 E. STOCKTON BLVD.
ELK GROVE, CA 95624

JOSEPH CHICOINE
MANAGER, GOVERNMENT & EXTERNAL AFFAIRS
9260 E. STOCKTON BLVD.
ELK GROVE, CA 95624

GREG R. GIERCZAK
EXECUTIVE DIRECTOR
SURE WEST TELEPHONE
PO BOX 969
200 VERNON STREET
ROSEVILLE, CA 95678

CHARLES E. BORN
MANAGER-STATE GOVERNMENT AFFAIRS
FRONTIER, A CITIZENS TELECOMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

ANDREW BROWN
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95811

CHRIS BROWN
EXECUTIVE DIRECTOR
CALIFORNIA URBAN WATER CONSERVATION
455 CAPITOL MAIL, SUITE 703
SACRAMENTO, CA 95814

DAVID HADDOCK
DIRECTOR, REGULATORY
01 COMMUNICATIONS, INC.
1515 K STREET, SUITE 100
SACRAMENTO, CA 95814

R. KEENAN DAVIS
GENERAL COUNSEL
01 COMMUNICATIONS, INC.
1515 K STREET, SUITE 100
SACRAMENTO, CA 95814

SHEILA DEY
WESTERN MANUFACTURED HOUSING COMMUNITIES
455 CAPITOL MALL STE 800
SACRAMENTO, CA 95814

TOM ECKHART
CAL - UCONS, INC.
10612 NE 46TH STREET
KIRKLAND, WA 98033

GREGORY J. KOPTA
DAVIS WRIGHT TREMAINE, LLP
1201 THIRD AVENUE, SUITE 2200
SEATTLE, WA 98101-3045

ANDREW O. ISAR
DIRECTOR, INDUSTRY RELATIONS
TELECOMMUNICATIONS RESELLERS ASSN.
7901 SKANSIE AVE 240
GIG HARBOR, WA 98335

Information Only

MICHAEL R. ROMANO
ATTORNEY AT LAW
LEVEL 3 COMMUNICATIONS, LLC
2300 CORPORATE PARK DR. STE 600
HERNDON, VA 20171-4845

KELLY FAUL
SENIOR MANAGER
1111 SUNSET HILLS DRIVE
RESTON, VA 20190

WILLIAM H. WEBER
ATTORNEY AT LAW
CBeyond COMMUNICATIONS
320 INTERSTATE NORTH PARKWAY
ATLANTA, GA 30339

DONALD M. JOHNSON
CHIEF OPERATING OFFICER
FULL POWER CORPORATION
2130 WATERS EDGE DR.
WESTLAKE, OH 44135-6602

KATHERINE K. MUDGE
ATTORNEY AT LAW
COVAD COMMUNICATIONS COMPANY
7000 NORTH MOPAC EXPRESSWAY, 2ND FLOOR
AUSTIN, TX 78731

JEFF WIRTZFELD
REGULATORY CONTACT
QWEST COMMUNICATION CORPORATION
1801 CALIFORNIA STREET, SUITE 4700
DENVER, CO 80202

MARJORIE O. HERLTH
QWEST COMMUNICATIONS CORPORATION
1801 CALIFORNIA ST., SUITE 4700
DENVER, CO 80202

GREGORY T. DIAMOND
7901 LOWRY BLVD.
DENVER, CO 80230

ALOA STEVENS
FRONTIER, A CITIZENS COMMUNICATIONS CO.
299 S MAIN ST STE 1700
SALT LAKE CITY, UT 84111-2279

AARON THOMAS
AES NEWENERGY, INC.
350 S. GRAND AVENUE, SUITE 2950
LOS ANGELES, CA 90071

NORMAN A. PEDERSEN
ATTORNEY AT LAW
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES, CA 90071

JANE DELAHANTY
U.S. TELEPACIFIC CORP.
515 S. FLOWER STREET, 47TH FLOOR
LOS ANGELES, CA 90071-2201

JACQUE LOPEZ
LEGAL ASSISTANT
VERIZON CALIFORNIA INC
CA501LB
112 LAKEVIEW CANYON ROAD
THOUSAND OAKS, CA 91362

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, RM 321
ROSEMEAD, CA 91770

ALLEN K. TRIAL
COUNSEL
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12D
SAN DIEGO, CA 92101

MICHAEL SHAMES
ATTORNEY AT LAW
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO, CA 92103

CARL C. LOWER
UTILITY SPECIALISTS
717 LAW STREET
SAN DIEGO, CA 92109-2436

STEVE LAFOND
PUBLIC UTILITIES DEPARTMENT
CITY OF RIVERSIDE
2911 ADAMS STREET
RIVERSIDE, CA 92504

DONALD H. MAYNOR
ATTORNEY AT LAW
235 CATALPA DRIVE
ATHERTON, CA 94027

JUDY PECK
SEMPRA ENERGY UTILITIES
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102

MARZIA ZAFAR
SAN DIEGO GAS & ELECTRIC/SOCAL GAS
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102

ANNA KAPETANAKOS
SENIOR COUNSEL
AT&T CALIFORNIA

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVENUE

525 MARKET STREET, ROOM 2024
SAN FRANCISCO, CA 94105

SAN FRANCISCO, CA 94107

MARILYN H. ASH
U.S. TELEPACIFIC CORP.
620/630 3RD ST.
SAN FRANCISCO, CA 94107

NANCY E. LUBAMERSKY
VICE PRESIDENT
U.S. TELEPACIFIC CORP.
620/630 3RD ST.
SAN FRANCISCO, CA 94107

MARK LYONS
SIMPSON PARTNERS LLP
SUITE 1800
TWO EMBARCADERO CENTER
SAN FRANCISCO, CA 94111

VINCE VASQUEZ
SENIOR FELLOW, TECHNOLOGY STUDIES
PACIFIC RESEARCH INSTITUTE
755 SANSOME STREET, SUITE 450
SAN FRANCISCO, CA 94111

JUDY PAU
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

KATIE NELSON
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

TREG TREMONT
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

ALLEN S. HAMMOND, IV
PROFESSOR OF LAW
SANTA CLARA UNIVERSITY SCHOOL OF LAW
500 EL CAMINO REAL
SANTA CLARA, CA 94305

STAFF COUNSEL
CONSUMER FEDERATION OF CALIFORNIA
520 EL CAMINO REAL, STE 340
SAN MATEO, CA 94402

ALEXIS K. WODTKE
STAFF ATTORNEY
CONSUMER FEDERATION OF CALIFORNIA
520 S. EL CAMINO REAL, STE. 340
SAN MATEO, CA 94402

JOHN DUTCHER
VICE PRESIDENT - REGULATORY AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD, CA 94534-7875

LOU FILIPOVICH
15376 LAVERNE DRIVE
SAN LEANDRO, CA 94579

JOHN R. GUTIERREZ
COMCAST PHONE OF CALIFORNIA, LLC
12647 ALCOSTA BLVD., SUITE 200
SAN RAMON, CA 94583

JOANN RICE
REGULATORY MANAGER
SBC LONG DISTANCE
5850 W. LAS POSITAS BLVD.
PLEASANTON, CA 94588

ANITA C. TAFF-RICE
ATTORNEY AT LAW
1547 PALOS VERDES MALL, SUITE 298
WALNUT CREEK, CA 94597

LEON M. BLOOMFIELD
ATTORNEY AT LAW
WILSON & BLOOMFIELD, LLP
1901 HARRISON STREET, SUITE 1620
OAKLAND, CA 94612

SHELLEY BERGUM
DEAF & DISABLED TELECOMMUNICATIONS PRGRM
505 14TH STREET, SUITE 400
OAKLAND, CA 94612-3532

TIMOTHY S. GUSTER
GENERAL COUNSEL
GREAT OAKS WATER COMPANY
PO BOX 23490
SAN JOSE, CA 95153

RICHARD H. LEVIN
ATTORNEY AT LAW
6741 SEBASTOPOL AVE STE 230
SEBASTOPOL, CA 95472-3838

ALEXANDRA HANSON
DIRECTOR PROVISIONING
01 COMMUNICATIONS, INC.
1515 K STREET, SUITE 100
SACRAMENTO, CA 95814

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET, STE. 1270
SACRAMENTO, CA 95814

SHEILA HARRIS
MANAGER, GOVERNMENT AFFAIRS
INTEGRA TELECOM HOLDINGS, INC.
1201 NE LLOYD BLVD., STE.500
PORTLAND, OR 97232

ADAM L. SHERR
ATTORNEY AT LAW
QWEST COMMUNICATIONS CORPORATION
1600 7TH AVENUE, 3206
SEATTLE, WA 98191-0000

State Service

DANIEL R. PAIGE
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA 90013

CHARLES H. CHRISTIANSEN
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHERRIE CONNER
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DANILO E. SANCHEZ
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 3200
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DONALD J. LAFRENZ
CALIF PUBLIC UTILITIES COMMISSION
RATEMAKING BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

FRED L. CURRY
CALIF PUBLIC UTILITIES COMMISSION
WATER ADVISORY BRANCH
ROOM 3106
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JACQUELINE A. REED
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5017
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JANE WHANG
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5029
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOHN E. THORSON
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5112
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KARL BEMESDERFER
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5006
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL C. AMATO
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
ROOM 3203
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NATALIE BILLINGSLEY
CALIF PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS & CONSUMER ISSUES BRA

FE N. LAZARO
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HELEN M. MICKIEWICZ
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5123
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JAMES SIMMONS
CALIF PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS & CONSUMER ISSUES BRA
ROOM 4108
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JEORGE S. TAGNIPES
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KARIN M. HIETA
CALIF PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS & CONSUMER ISSUES BRA
ROOM 4108
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

LEE-WHEI TAN
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL D. MCNAMARA
CALIF PUBLIC UTILITIES COMMISSION
CARRIER BRANCH
ROOM 3207
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PHILLIP ENIS
CALIF PUBLIC UTILITIES COMMISSION
CONSUMER ISSUES ANALYSIS BRANCH

ROOM 4108
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROOM 2101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RICHARD FISH
CALIF PUBLIC UTILITIES COMMISSION
LICENSING TARIFFS, RURAL CARRIERS & COST
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RICHARD SMITH
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5019
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROBERT M. POCTA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RUDY SASTRA
CALIF PUBLIC UTILITIES COMMISSION
UTILITY & PAYPHONE ENFORCEMENT
AREA 2-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SIMIN LITKOUHI
CALIF PUBLIC UTILITIES COMMISSION
POLICY & DECISION ANALYSIS BRANCH
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEVEN KOTZ
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 2251
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SUE WONG
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

TIMOTHY J. SULLIVAN
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5212
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

WILLIAM JOHNSTON
CALIF PUBLIC UTILITIES COMMISSION
POLICY & DECISION ANALYSIS BRANCH
AREA 3-F
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

WADE MCCARTNEY
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814

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Appearance

MICHELE F. JOY
GENERAL COUNSEL
ASSOCIATION OF OIL PIPE LINES
1101 VERMONT AVENUE N.W. STE 604
WASHINGTON, DC 20005-3521

KIM LOGUE
REGULATORY ANALYST
LCI INTERNATIONAL TELECOM CORP.
4250 N. FAIRFAX DRIVE, 12W002
ARLINGTON, VA 22203

CECIL O. SIMPSON, JR.
US ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET, SUITE 713
ARLINGTON, VA 22203-1837

ROBERT A. SMITHMIDFORD
VICE PRESIDENT
BANK OF AMERICA
8011 VILLA PARK DRIVE
RICHMOND, VA 23228-2332

HUGH COWART
BANK OF AMERICA TECHNOLOGY & OPERATIONS
FL9-400-01-10
9000 SOUTHSIDE BLVD, BUILDING 400 1ST FL
JACKSONVILLE, FL 32256

KEVIN SAVILLE
ASSOCIATE GENERAL COUNSEL
FRONTIER COMMUNICATIONS
2378 WILSHIRE BLVD.
MOUND, MN 55364

ROBIN BLACKWOOD
ATTORNEY AT LAW
VERIZON
600 HIDDEN RIDGE, HQE 03H29
IRVING, TX 75038

ROBBIE RALPH
DIRECTOR, ECONOMIC REGULATION & TARIFF
SHELL CALIFORNIA PIPELINE COMPANY LLC
PO BOX 2648
HOUSTON, TX 77252-2648

ANNA M. SANCHOU
GENERAL MANAGER - NETWORK REGULATORY
SOUTHWESTERN BELL MESSAGING SERVICES INC

EDWARD B. GIESEKING
DIRECTOR/PRICING AND TARIFFS
SOUTHWEST GAS CORPORATION

5800 NW PARKWAY, STE. 125
SAN ANTONIO, TX 78249

5241 SPRING MOUNTAIN ROAD
LAS VEGAS, NV 89150

VALERIE J. ONTIVEROZ
SOUTHWEST GAS CORPORATION
PO BOX 98510
LAS VEGAS, NV 89193-8510

NIKAYLA K. NAIL THOMAS
EXECUTIVE DIRECTOR
CALTEL
515 S. FLOWER STREET, 47/F
LOS ANGELES, CA 90071

JERRY R. BLOOM
ATTORNEY AT LAW
WINSTON & STRAWN LLP
333 SOUTH GRAND AVENUE, 38TH FLOOR
LOS ANGELES, CA 90071-1543

ROBERT J. DIPRIMIO
VALENCIA WATER COMPANY
24631 AVENUE ROCKEFELLER
VALENCIA, CA 91355

JESUS G. ROMAN
ATTORNEY AT LAW
VERIZON ACCESS TRANSMISSION SERVICES
112 S. LAKEVIEW CANYON ROAD, CA501LB
THOUSAND OAKS, CA 91362

MICHAEL A. BACKSTROM
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

ROLAND S. TANNER
SOUTHERN CALIFORNIA WATER COMPANY
PO BOX 9016
SAN DIMAS, CA 91773

PAUL A. SZYMANSKI
ATTORNEY AT LAW
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET
SAN DIEGO, CA 92101

PETER M. DITO
KINDER MORGAN ENERGY PARTNERS
1100 TOWN AND COUNTRY ROAD
ORANGE, CA 92868

DIANE I. FELLMAN
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ELAINE M. DUNCAN
ATTORNEY AT LAW
VERIZON CALIFORNIA INC.
711 VAN NESS AVENUE, SUITE 300
SAN FRANCISCO, CA 94102

MICHEL PETER FLORIO
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102

MONICA L. MCCRARY
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5134
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SINDY J. YUN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

THOMAS A. DOUB
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

HEIDI SIECK WILLIAMSON
DEPT OF TELECOMMUNICATIONS & INFORMATION
CITY & COUNTY OF SAN FRANCISCO
875 STEVENSON STREET, 5TH FLOOR
SAN FRANCISCO, CA 94103

ANN KIM
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

DAVID DISCHER
ATTORNEY AT LAW
PACIFIC BELL TELEPHONE COMPANY
525 MARKET STREET, RM. 2027
SAN FRANCISCO, CA 94105

JADINE LOUIE
REGULATORY SERVICES
SBC CALIFORNIA
ASSOCIATE DIRECTOR
525 MARKET ST., 19FL, 7
SAN FRANCISCO, CA 94105

JOHN P. CLARKE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MCB10C
SAN FRANCISCO, CA 94105

MARY E. WAND
ATTORNEY AT LAW
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105

PHUONG N. PHAM
MORRISON & FOERSTER
425 MARKET STREET
SAN FRANCISCO, CA 94105

STEPHEN H. KUKTA
COUNSEL
SPRINT NEXTEL
201 MISSION STREET, STE. 1400
SAN FRANCISCO, CA 94105

MARILYN H. ASH
U.S. TELEPACIFIC CORP.
620/630 3RD ST.
SAN FRANCISCO, CA 94107

PETER A. CASCIATO
ATTORNEY AT LAW
PETER A. CASCIATO P.C.
355 BRYANT STREET, SUITE 410
SAN FRANCISCO, CA 94107

CHERYL HILLS
ICG COMMUNICATIONS, INC.
620 3RD ST
SAN FRANCISCO, CA 94107-1902

ARTHUR D. LEVY
639 FRONT STREET, 4TH FLOOR
SAN FRANCISCO, CA 94111

DAVID A. SIMPSON
SIMPSON PARTNERS
900 FRONT STREET
SAN FRANCISCO, CA 94111

ENRIQUE GALLARDO
LATINO ISSUES FORUM
160 PINE STREET, SUITE 700

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI DAY & LAMPREY

SAN FRANCISCO, CA 94111

505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111

JEFFREY F. BECK
ATTORNEY AT LAW
COOPER, WHITE & COOPER, L.L.P.
201 CALIFORNIA ST., 17TH FLOOR
SAN FRANCISCO, CA 94111

MARK P. SCHREIBER
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

PATRICK M. ROSVALL
ATTORNEY AT LAW
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO, CA 94111

MARTIN A. MATTES
ATTORNEY AT LAW
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA 94111-4799

THOMAS HAMMOND
REAL TELEPHONE COMPANY
PO BOX 640410
SAN FRANCISCO, CA 94164-0410

EARL NICHOLAS SELBY
ATTORNEY AT LAW
LAW OFFICES OF EARL NICHOLAS SELBY
418 FLORENCE STREET
PALO ALTO, CA 94301

RICHARD M. HAIRSTON
R.M. HAIRSTON COMPANY
1112 LA GRANDE AVENUE
NAPA, CA 94558-2168

BETSY STOVER GRANGER
PACIFIC BELL WIRELESS
4420 ROSEWOOD DRIVE, 4TH FLOOR
PLEASANTON, CA 94588

DOROTHY CONNELLY
DIRECTOR, GOVERNMENT RELATIONS
AIRTOUCH COMMUNICATIONS, INC.
2999 OAK RD 5
WALNUT CREEK, CA 94597-2066

MARCO GOMEZ
ATTORNEY AT LAW
S.F. BAY AREA RAPID TRANSIT
PO BOX 12688
OAKLAND, CA 94604-2688

DOUG GARRETT
SENIOR DIRECTOR, GOVERNMENT AFFAIRS
ICG COMMUNICATIONS, INC.
180 GRAND AVENUE, STE 800
OAKLAND, CA 94612

LESLA LEHTONEN
STAFF ATTORNEY
CALIFORNIA CABLE TELEVISION ASSN.
360 22ND STREET, NO. 750
OAKLAND, CA 94612

REED V. SCHMIDT
VICE PRESIDENT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703

THALIA N.C. GONZALEZ
LEGAL COUNSEL
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY, CA 94704

PALLE JENSEN
DIRECTOR OF REGULATORY AFFAIRS
SAN JOSE WATER COMPANY
374 WEST SANTA CLARA STREET
SAN JOSE, CA 95196

RICHARD J. BALOCCO
PRESIDENT
CALIFORNIA WATER ASSOCIATION
374 W. SANTA CLARA STREET
SAN JOSE, CA 95196

CHARLES E. BORN
MANAGER-STATE GOVERNMENT AFFAIRS
FRONTIER, A CITIZENS TELECOMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

ANDREW BROWN
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95811

CHRIS BROWN
EXECUTIVE DIRECTOR
CALIFORNIA URBAN WATER CONSERVATION
455 CAPITOL MAIL, SUITE 703
SACRAMENTO, CA 95814

SHEILA DEY
WESTERN MANUFACTURED HOUSING COMMUNITIES
455 CAPITOL MALL STE 800
SACRAMENTO, CA 95814

TOM ECKHART
CAL - UCONS, INC.
10612 NE 46TH STREET
KIRKLAND, WA 98033

ANDREW O. ISAR
DIRECTOR, INDUSTRY RELATIONS
TELECOMMUNICATIONS RESELLERS ASSN.
7901 SKANSIE AVE 240
GIG HARBOR, WA 98335

Information Only

KELLY FAUL
SENIOR MANAGER
1111 SUNSET HILLS DRIVE
RESTON, VA 20190

DONALD M. JOHNSON
CHIEF OPERATING OFFICER
FULL POWER CORPORATION
2130 WATERS EDGE DR.
WESTLAKE, OH 44135-6602

GREGORY T. DIAMOND
7901 LOWRY BLVD.
DENVER, CO 80230

REX KNOWLES
REGIONAL VICE PRESIDENT
XO COMMUNICATIONS SERVICES, INC.
111 EAST BROADWAY, SUITE 1000
SALT LAKE CITY, UT 84111

AARON THOMAS
AES NEWENERGY, INC.
350 S. GRAND AVENUE, SUITE 2950
LOS ANGELES, CA 90071

NORMAN A. PEDERSEN
ATTORNEY AT LAW
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, NO. 1500
LOS ANGELES, CA 90071

JANE DELAHANTY
U.S. TELEPACIFIC CORP.
515 S. FLOWER STREET, 47TH FLOOR
LOS ANGELES, CA 90071-2201

JACQUE LOPEZ
LEGAL ASSISTANT
VERIZON CALIFORNIA INC
CA501LB
112 LAKEVIEW CANYON ROAD
THOUSAND OAKS, CA 91362

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, RM 321
ROSEMEAD, CA 91770

ALLEN K. TRIAL
COUNSEL
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ-12D
SAN DIEGO, CA 92101

ESTHER NORTHRUP
COX CALIFORNIA TELCOM
5159 FEDERAL BLVD.
SAN DIEGO, CA 92105

STEVE LAFOND
PUBLIC UTILITIES DEPARTMENT
CITY OF RIVERSIDE
2911 ADAMS STREET
RIVERSIDE, CA 92504

CHRISTINE A. MAILLOUX
ATTORNEY AT LAW
TURN
711 VAN NESS AVE., STE. 350
SAN FRANCISCO, CA 94102

JUDY PECK
SEMPRA ENERGY UTILITIES
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102

MARZIA ZAFAR
SAN DIEGO GAS & ELECTRIC/SOCAL GAS
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102

ANNA KAPETANAKOS
SENIOR COUNSEL
AT&T CALIFORNIA
525 MARKET STREET, ROOM 2024
SAN FRANCISCO, CA 94105

THOMAS J. SELHORST
SENIOR PARALEGAL
AT&T CALIFORNIA
525 MARKET STREET, RM. 2023
SAN FRANCISCO, CA 94105

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVENUE
SAN FRANCISCO, CA 94107

JOHN DUTCHER
VICE PRESIDENT - REGULATORY AFFAIRS
MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD, CA 94534-7875

LOU FILIPOVICH
15376 LAVERNE DRIVE
SAN LEANDRO, CA 94579

JOANN RICE
REGULATORY MANAGER
SBC LONG DISTANCE

5850 W. LAS POSITAS BLVD.
PLEASANTON, CA 94588

TIMOTHY S. GUSTER
GENERAL COUNSEL
GREAT OAKS WATER COMPANY
PO BOX 23490
SAN JOSE, CA 95153

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING, P.C.
915 L STREET, STE. 1270
SACRAMENTO, CA 95814

State Service

DANIEL R. PAIGE
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA 90013

CHERRIE CONNER
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DANILO E. SANCHEZ
CALIF PUBLIC UTILITIES COMMISSION
WATER BRANCH
ROOM 3200
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DONALD J. LAFRENZ
CALIF PUBLIC UTILITIES COMMISSION
RATEMAKING BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

FE N. LAZARO
CALIF PUBLIC UTILITIES COMMISSION
PROGRAM MANAGEMENT & IMPLEMENTATION BRAN
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

FRED L. CURRY
CALIF PUBLIC UTILITIES COMMISSION
WATER ADVISORY BRANCH
ROOM 3106
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

GEORGE S. TAGNIPES
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOHN E. THORSON
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5112
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL D. MCNAMARA
CALIF PUBLIC UTILITIES COMMISSION
CARRIER BRANCH
ROOM 3207
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NATALIE BILLINGSLEY
CALIF PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS & CONSUMER ISSUES BRA
ROOM 4108
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PHILLIP ENIS
CALIF PUBLIC UTILITIES COMMISSION
CONSUMER ISSUES ANALYSIS BRANCH

RICHARD FISH
CALIF PUBLIC UTILITIES COMMISSION
LICENSING TARIFFS, RURAL CARRIERS & COST

ROOM 2101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROBERT M. POCTA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEVEN KOTZ
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 2251
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

WADE MCCARTNEY
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF STRATEGIC PLANNING
770 L STREET, SUITE 1050
SACRAMENTO, CA 95814

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